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Exhibits:

UNITED STATES DISTRICT  
DISTRICT OF MASSACHUSETTS

CIVIL ACTION NO. 04-10106 JT

ZHANNA CHIZHIK,  
Plaintiff,

v.

SEA HUNT BOATS, INC., TROPICLAND  
MARINE AND TACKLE, INC.,  
Defendant.

DEPOSITION of GREGORY ZILBERMAN, a witness called on  
behalf of the Defendant Sea Hunt Boats, Inc., taken  
pursuant to the applicable provisions of the  
Massachusetts Rules of Civil procedure, before J. in  
F. Kielty, a Notary Public in and for the  
Commonwealth of Massachusetts, at the Law Office of  
Murphy, Hesse, Toomey & Lehane, 300 Crown Colony  
Drive, Quincy, Massachusetts, on Monday, May 16,  
2005, commencing at 9:52 a.m.

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1 A. I don't remember, but at this particula:  
2 occasion, we were just the day before.

3 Q. You had fished with Mr. Chizhik the day  
4 before this accident as well?

5 A. Yes.

6 THE WITNESS: Excuse me.

7 (Discussion off the record.)

8 THE WITNESS: I'm sorry.

9 BY MR. BREEN:

10 Q. Do you know the day of the accident, Mr.   
11 Zilberman, what day it happened on?

12 A. Yes, it was May 25th.

13 Q. So on May 24th, you had also fished with Mr.  
14 Chizhik?

15 A. That's correct.

16 Q. And had you fished with Mr. Chizhik on M  
17 24th also in the 22-foot Sea Hunt boat?

18 A. Yes.

19 Q. Had you fished with Mr. Chizhik in the  
20 22-foot Sea Hunt boat on any occasion before May  
21 24th of 2003?

22 A. No. It was a brand-new boat. I just ha it  
23 for probably less than a month. The boat, I had  
24 only 12 hours on the motor the day of the accide .

1 it, look it over?

2 A. Not that particular. I've seen the boat I  
3 mean, but not necessary that particular boat.  
4 mean, I saw it when they brought it into dealer you  
5 know, when they start setting up, because when the  
6 boat arrived, the engine is not on it.

7 Q. I see.

8 A. So the dealer install the engine, and they  
9 also install for me a radio and electronics.

10 Q. What type of engine did you have installed  
11 on it?

12 A. I bought it with 140-horse Johnson  
13 four-stroke motor, which is actually made by  
14 Suzuki.

15 Q. Now, when you said that it was equipped  
16 with the engine, the radio, and the electronics by  
17 the dealer, what electronics are you referring  
18 there?

19 A. I have a GPS Chartplotter, Lowrance, and I  
20 also have a Lowrance Fishfinder, two separate units.  
21 And it's equipped with a radio.

22 Q. At the time that you took delivery of the  
23 Navigator 22, did you notice anything wrong with the  
24 way that the boat was made?

1 A. I cannot do that judgment.

2 Q. Okay.

3 A. I'm not qualified in any way. I mean,  
4 nothing that I see would -- if I would seen  
5 something that doesn't look right, I, obviously  
6 would pick it up.

7 Q. That is actually all I am asking for, M  
8 Zilberman. I am only asking whether from what u  
9 saw if you noticed anything that looked to be w ng  
10 with it, just from what you saw?

11 A. No.

12 Q. And you took delivery of it, and at some  
13 point soon after that, you took it out in the water  
14 to break it in to try to get --

15 A. That's correct.

16 Q. -- used to it? How long after you took  
17 delivery did you first take it out?

18 A. I don't remember, probably soon.

19 Q. Within a week or two or three maybe?

20 A. I don't think I waited three weeks. I  
21 think I owned that thing for a week, maybe three  
22 weeks altogether. As I said, it was only 12 hours  
23 on the, you know, engine running.

24 Q. When you took the Navigator 22 out for the

1 A. That's correct.

2 Q. So you didn't have any problems with the  
3 Navigator 22 boat the first time you went out,  
4 right?

5 A. No.

6 Q. Now, there was a second day, Mr. Zilberstein,  
7 that you took the boat out to try it out or break  
8 it in in the matter that you have talked about,  
9 right?

10 A. Yes.

11 Q. How long after the first time did you take  
12 it out a second time? Was it the next day?

13 A. I don't remember exactly. As I said, pretty  
14 much almost -- I maybe been on it once before, maybe  
15 second day we went and took some fishing rods with  
16 Grigory.

17 Q. Okay.

18 A. Because as I said, it was only 12 hours total  
19 total, and I believe the break-in period's like ten  
20 hours.

21 Q. I see. So you don't know whether you took  
22 it out twice before you first went with Grigory,  
23 or --

24 A. Oh, I'd -- maybe once, maybe twice, not more

1 A. Maybe probably when we went fishing was  
2 first time that I was -- would have been either  
3 right around ten or maybe at ten hours.

4 Q. I see.

5 A. So we're pretty much -- probably I took it  
6 couple times by myself.

7 Q. Okay.

8 A. But not more than that.

9 Q. If you took it out more than once before you  
10 went with Mr. Chizhik, do you have any memory of  
11 anything that happened on any of those occasions  
12 with regard to the boat?

13 A. Nothing out of the ordinary.

14 Q. Okay.

15 A. You know, just pretty regular rides.

16 Q. Nothing that caused you to be concerned  
17 about the boat, correct?

18 A. No, it was also very quiet weather. I mean,  
19 I wouldn't take the boat out in the rough water when  
20 you cannot, you know, rev. I mean, when you just go  
21 breaking in, you try to be -- you know, you don't do  
22 much with an engine. You want it just to work at  
23 certain type of operation, and that first time was  
24 quiet weather. So pretty much you go at idle, and

1 Q. So when you arrived at Weymouth, it was  
2 around 10:00 or 11:00 in the morning?

3 A. Something like this.

4 Q. I see.

5 A. Maybe 10:00, 10:30.

6 Q. Did you drive to Weymouth with Mr. Chiz k,  
7 or did he arrange for his own transportation?

8 A. No, they both -- Chizhik and Lashgari, ey  
9 came to my house, and we went in my truck, hock  
10 the boat. And we went in my truck. They left eir  
11 cars at my house.

12 THE WITNESS: Could we excuse me for on  
13 minute?

14 MR. BREEN: Oh, absolutely. Sure.

15 (Brief recess.)

16 MR. BREEN:

17 Q. When you arrived at the Weymouth Landing  
18 where you were going to launch your boat, --

19 A. Uh-huh. (Indicates affirmatively).

20 Q. -- were there other people putting their  
21 boats in the water at that time?

22 A. I don't recall, but there were probably  
23 few trailers. There wasn't as many people on th  
24 water as normally would be because it was kind c



1 A. No.

2 Q. Do you know if any of your passengers d  
3 that day?

4 A. As far as I know, no.

5 Q. On the way from Weymouth up through Qui y  
6 Bay, did you have any difficulty with your boat

7 A. No.

8 Q. Did the boat handle the way that you  
9 expected it would handle under those types of  
10 conditions?

11 A. I'd say pretty much so.

12 Q. Was your trip to Quincy Bay and under t  
13 Long Island Bridge uneventful?

14 A. Yes, I could say so.

15 Q. The first place that you fished was, I  
16 believe you said, by Deer Island; is that right?

17 A. No, we were probably closer, like in the  
18 harbor right in a channel near, say, between the  
19 airport, and I don't know if it's the first spot or  
20 we stopped on the way. I can't remember, but I now  
21 we stopped in the airport, between Castle Island and  
22 the airport, in that area. We will look for fis  
23 inside the harbor.

24 Q. I see. Up to the point in time where yo

1 first stopped to fish, did you notice any problems  
2 with the boat that you were using?

3 A. No.

4 Q. And then you indicated that you had gone  
5 around Deer Island, Green Island, and the harbor  
6 islands to Brewster Island, correct?

7 A. Yes.

8 Q. Up to the point in time that you arrived at  
9 Brewster, had you noticed any problems at all with  
10 the boat that you were using?

11 A. No.

12 Q. And what happened when you reached the area  
13 around Brewster Island?

14 A. Well, we settled to take a drift, and, usually  
15 know, cast over toward the rocks. That was a pretty  
16 good-sized surf over there.

17 Q. Okay.

18 A. So, as usual, I kind of assess the way the  
19 current goes, where the wind can -- you know, how  
20 the boat would drift.

21 Q. Around what time of day, sir, did you arrive  
22 around Brewster Islands where you observed this surf  
23 that you talked about?

24 A. Sometime just before 2:00 in an afternoon, I

1 Q. Mr. Zilberman, at the time of the -- st ke  
2 that.

3 When you arrived in the area of Middle  
4 Brewster Island, it was around two o'clock in t  
5 afternoon?

6 A. It's Great Brewster, not Middle Brewste

7 Q. I see.

8 A. Outer Brewster.

9 Q. When you arrived in the area of Outer  
10 Brewster Island, it was around two o'clock in tl  
11 afternoon?

12 A. Probably something like that or just  
13 before.

14 Q. Had the sea conditions changed at all f: n  
15 the time that you left Weymouth until the time t at  
16 you arrived outside of Outer Brewster Island?

17 A. Well, going to the Brewster, it was -- :  
18 was rougher than we were going before, but we we a  
19 also getting, you know, out of the harbor. And  
20 usually, at the entrance the water is always rou 1,  
21 or you could have, you know, no waves or, like, )  
22 to one foot inside, and it will be couple feet  
23 waves, you know, outside or even, you know,  
24 occasional large at the entrance.

1 A. We wasn't there for long. Thing is tha  
2 both Grigory and Lashgari, they not experienced  
3 fishermen, and when you fish the rocks, when yo  
4 fish the surf, there is a trick. You have to c t  
5 rather precisely, and none of them are good cas rs.  
6 They are not wise fishermen.

7 So they wasn't catching kind of. You k w,  
8 we kind of try, and it's also very early in the  
9 season. And the fish is not settle up yet. So t  
10 was more kind of try.

11 So I caught one or two fish, and we wer  
12 pretty much planning to go back in the harbor, : i  
13 know, to the spot where water was a little quiet and  
14 make it a easier to cast and where Grigory had s ne  
15 success, you know, day before.

16 Q. Over what period of time did you catch e  
17 or two fish in the area of Outer Brewster Island

18 A. Ten minutes, 15 minutes at the most. We  
19 wasn't there for long. I mean, we came and kind of,  
20 you know, assess the situation. We did maybe tw  
21 three drifts. That's about it.

22 Q. What kind of bait were you using or lure

23 A. I -- we -- I using lures. It's mostly  
24 actually like silk type or big "G" type.

1 guys were kind of lookout.

2 Q. Were you faced --

3 A. And I haven't seen the wave that hit us and  
4 the waves were coming from behind. I mean, even so  
5 often, I mean, every -- as a minute or so, I would  
6 turn around and scan the sea to see what's going on,  
7 but you also have to have your attention on the line  
8 and, obviously, on the island to make sure that boat  
9 is not drifting onto the rocks. So I was facing the  
10 island, the rocks. (Witness indicating.)

11 Q. You were facing the island. Where was Mr.  
12 Chizhik facing, if you know?

13 A. They were both kind of behind me, but I  
14 don't recall which of them was standing on my right  
15 and which was standing on the left. But everybody  
16 had a good footing, and everybody had something to  
17 grab to so, you know, boat commotion wouldn't throw  
18 you, you know, out of the boat. (Witness  
19 indicating.)

20 Q. Did you hear anybody say anything in the  
21 period of time which immediately came before your  
22 boat capsizing?

23 A. I really don't remember for sure. It's what  
24 happened kind of so fast and sudden that I don't

1 remember any feeling of getting wet. I don't  
2 remember any feeling of water rushing into the at.  
3 All I know that just, you know, one moment I'm  
4 bringing the line, and next thing, I'm kind of  
5 moving. And then I remember I had a bump on my  
6 head, and I'm under water.

7 Q. A bump on your hand?

8 A. Head. (Witness indicating.)

9 Q. Head.

10 A. That's probably when boat capsized. It  
11 probably hit me on the head. It's kind of --  
12 it's -- I didn't have time to react. There was  
13 nothing -- usually when a swell picks you up, it's  
14 gonna pick you up, and then the boat start moving.  
15 You know, there was none of this. It was just  
16 it's happened momentarily kind of. (Witness  
17 indicating.)

18 Q. Did you hear Mr. Chizhik say anything right  
19 before finding the boat capsize? Let me ask you a  
20 different question.

21 A. I --

22 Q. Do you recall hearing Mr. Chizhik say  
23 anything immediately before the boat capsized?

24 A. I don't remember exactly, you know, what we

1           were saying. All I -- just before that, they kind  
2           of -- they said, "Well, let's go home." And that's  
3           what we were -- I mean, not home, but, "Let's go to  
4           different spot."

5                       We didn't -- we didn't want to go home  
6           but we wanted to move. So that was kind of a plan.  
7           I was just, you know, reeling in the line so we  
8           could turn around and get away, and then it  
9           happened.

10          Q.           Do you recall Mr. Lashgari saying anything  
11           immediately before the boat capsized?

12          A.           No. As I said, we had maybe a minute or  
13           two. Prior to that, we kind of -- the guys said  
14           "Well, you know, we want to go different spot."

15                       So we -- and that's what we were planning to  
16           do.

17          Q.           Do you know what caused the boat to capsize,  
18           do you know?

19          A.           I mean, I can only assume it's a wave, but  
20           all I know is just one thing I'm upside down.  
21           it's -- as I said, it happened so fast, no warning  
22           or anything, and I haven't seen the wave that hit  
23           us. I assume it's a wave that hit us, but as I  
24           said, I was kind of facing the island. And the wave



1 direction they would go, they were kind of coming  
2 from behind me. We were pretty much -- (Witness  
3 indicating.)

4 MR. HIRSHBERG: Just wait for a question.  
5 BY MR. BREEN:

6 Q. Did you ever tell a newspaper reporter that  
7 a wave had hit you?

8 A. I didn't speak to reporters. I didn't want  
9 to give any interviews.

10 Q. You didn't speak to any newspaper  
11 reporters?

12 A. No, they were calling, but I don't  
13 remember.

14 THE REPORTER: I'm sorry?

15 THE WITNESS: I don't really remember all  
16 the calls now. It's been couple years now.

17 BY MR. BREEN:

18 Q. What happened next, Mr. Zilberman, after  
19 you recall being in the water with a bump on your  
20 head?

21 A. Then it's kind of -- you know, it's weird  
22 I'm under the water and feels weird. I just, you  
23 know, have a rod in my hand still, and I remember  
24 just thinking, Should I let it go or keep it,



1 me, "Greg, look."

2 And when I turn my head toward Chizhik,  
3 see him not holding the boat but swimming right  
4 next to the hull with his head in the water  
5 motionless.

6 Q. Well, let me just ask you a question about  
7 that, Mr. Zilberman. When you saw Mr. -- after Mr.  
8 Lashgari says "Look" and you turn your attention to  
9 Mr. Chizhik, you see him in the water with his face  
10 down in the water?

11 A. That's correct.

12 Q. And you say he was swimming. Was he, in  
13 fact, moving and swimming at that time, or was he  
14 motionless?

15 A. I think he was motionless at that time.

16 Q. And this is about five to ten minutes after  
17 the boat is overturned?

18 A. I would guess so. I mean, nobody looked at  
19 a watch, obviously.

20 Q. Of course.

21 A. And, you know, it's kind of difficult to  
22 judge, but it couldn't be, you know, awfully long  
23 because, you know, it's not like you have to swim  
24 far.

1 Q. Based on your best memory of it and  
2 understanding you didn't have an opportunity to look  
3 at your watch, do you think it was about five to ten  
4 minutes after the boat capsized that you saw Mr  
5 Chizhik motionless in the water?

6 A. I'd say at least that long.

7 Q. Could it have been longer than 15 minutes,  
8 or is that not likely?

9 A. I don't know, maybe 15 minutes or so. It's  
10 really -- you know, something like that happened and  
11 of, and in, you know, this situation, time is --  
12 it's a little difficult to judge.

13 Q. Did --

14 A. I mean, I can only assume certain periods of  
15 time, but nobody really tracked it kind of.

16 Q. Did it seem like a short period of time  
17 after the boat overturned that you saw Mr. Chizhik  
18 in this fashion?

19 A. Well, it wasn't very long, no. I mean, --

20 Q. Now, what happened when you saw Mr. Chizhik  
21 in the water face down as you have described for us?

22 A. At that time Lashgari held my hand, and  
23 climb to the top of a boat. And I get to Grigor  
24 and I pulled him out. And he looked dead to me. He

1 had -- his eyes were rolled, and he had some foam in  
2 his mouth. And he wasn't breathing.

3 Q. His eyes were rolled up into --

4 A. Yeah.

5 Q. -- his head?

6 A. He was a -- it was a lifeless body.

7 Q. So you formed the impression then at the  
8 time that you saw Mr. Chizhik that he had died?

9 A. At the time I pulled him out, he looked  
10 dead. I tried to do CPR, kind of tried to breathe  
11 into him, but you can't really do CPR in the water.

12 I mean, if we were on firm ground kind of, I  
13 were able to pull him, I might have been able to  
14 revive him or especially if we had somebody trained,  
15 but no, not that we could do.

16 You know, I kept him out of the water, and I  
17 try some CPR. I tried, you know, to hit his head  
18 just to make sure, but there was no movement or  
19 anything. And, you know, at that point I was just  
20 you know, holding to the body. (Witness  
21 indicating.)

22 Q. At any time after you tried that CPR and the  
23 things that you did to try to revive Mr. Chizhik  
24 did he ever give any indication of coming back to

1 life? Did he ever resuscitate or revive?

2 A. No.

3 Q. What do you recall happening next?

4 A. Then we were drifting. You know, Lashgari  
5 was pretty scared, just kind of crying, screaming  
6 for help, you know, praying.

7 My thoughts were how I'm going to face  
8 Zhanna. I wouldn't want to let the body go because  
9 there are currents over there, and maybe nobody  
10 even to bury. Because I know about a year ago,  
11 diver perished over there. They were looking for  
12 him.

13 Q. So you were drifting and thinking about Mr.  
14 Chizhik's widow, Zhanna?

15 A. Yes.

16 Q. And Mr. Lashgari was crying, praying, and  
17 scared?

18 A. Yes.

19 Q. What happened next, sir?

20 A. We kept drifting, and we were hoping that  
21 somebody would pass, and there were no boats in  
22 sight. I finally -- I mean, I'm getting tired to  
23 hold the body. So I kind of put him on the top,  
24 almost wedged him between, you know, an outboard and

1 it was not overloaded. Sea wasn't quiet, but i  
2 wasn't that heavy that it would flip the boat. t  
3 shouldn't. We were standing pretty much in the  
4 middle. I mean, we were kind of all around cen r  
5 console. So we wasn't standing on one side of  
6 boat that would disturb the weight.

7 Q. You don't know of anything that was wro  
8 with the boat do you, sir, that would cause it --  
9 you don't know of anything, do you?

10 A. Not to my knowledge.

11 Q. Okay.

12 A. But again, I'm not an expert.

13 Q. I am only asking you about your knowled .  
14 So you don't know of anything that was wrong wi  
15 the boat caused it to overturn, do you?

16 A. All I know it just capsized.

17 Q. Now, you did not recover the boat in wh h  
18 you were traveling for --

19 A. That --

20 Q. -- fishing, correct?

21 A. That particular boat is gone, because it s  
22 got into the surf and the rocks. And what insur ice  
23 company told me when a towboat came to that late  
24 on, I think maybe next day, they said there was

1 nothing left to recover. So nobody could reall  
2 examine it, and they said it was just in pieces  
3 There was -- they said there were just couple p ces  
4 floating of fiberglass. So nothing was recover  
5 out it. I was kind of asking, you know, what s pe  
6 it is.

7 I mean, I know when -- at the moment wh  
8 these people arrive, I felt like, you know, the  
9 console and the bottom wall start hitting the  
10 rocks.

11 And as a matter of fact, if they wouldn  
12 take us off that boat at that particular moment I  
13 don't know if we could survive, because there's  
14 nothing really to grab because the transom, and you  
15 know, boat start hitting the rocks. So prior to  
16 that, we were, you know, sitting in a calm water  
17 maybe just, you know, very slow motion.

18 Q. So you never recovered that boat or any art  
19 of it, correct?

20 A. No. None, nothing at all.

21 Q. At some point in time thereafter, you bought  
22 another boat, right?

23 A. Yes, I did.

24 Q. You bought another Navigator 22, right?

1 A. That's correct.

2 Q. And did you buy that Navigator 22 from  
3 Tropicland?

4 A. That's correct.

5 Q. And the Navigator 22 that you bought from  
6 Tropicland was exactly the same as the one that you  
7 had been involved in the accident, correct?

8 A. To best of my knowledge, it is. It's a  
9 next year. The one that I have now is 2004, and  
10 that one that broken, you know, that capsized is  
11 2003. But I've been told that there was no  
12 changes.

13 Q. After you lost the 2003 Navigator 22 at sea,  
14 did you look at other boat models?

15 A. No, the boat pretty much much more  
16 expensive. This boat and with this particular  
17 package, with this engine, it was very well-priced  
18 for size of this boat.

19 Q. Do you still have the boat that you  
20 purchased after the accident in 2003?

21 A. Yes, I do.

22 Q. How many hours do you have on that boat  
23 now?

24 A. I have about maybe 130 hours.